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In re Application of	:	DECISION ON
WOLFGANG et al	:	
Application No.: 10/550,781	:	
PCT No.: PCT/DE2003/003288	:	
Int. Filing Date: 02 October 2003	:	PETITION UNDER
Priority Date: 28 March 2003	:	
Attorney's Docket No.: 2003P04656WOUS	:	
For: TEMPERATURE COMPENSATION ELEMENT	:	
FOR A CONNECTION UNIT	:	37 CFR 1.181

This Decision is in response to applicants' "SUPPLEMENTAL REQUEST TO WITHDRAW THE HOLDING OF ABANDONMENT" filed on 08 September 2008, which is being treating as a renewed petition under 37 CFR 1.181 requesting that the above-identified application's declaration was timely filed on 07 August 2006 by facsimile.

### **BACKGROUND**

In a decision from this on Office on 26 August 2008, the petition filed on 26 June 2008 under 37 CFR 1.181 was dismissed. The decision stated that applicants did not meet item (2) under 37 CFR 1.8(b) because no copy of the executed declaration filed on August 7, 2006 has been filed.

On 08 September 2008, petitioner filed the current renewed petition with included a copy of the executed declaration filed on August 7, 2006.

### **DISCUSSION**

A petition under 37 CFR 1.181 filed under 37 CFR 1.8(b) Certificated of mailing or transmission must be accompanied by:

(b) In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the Patent and Trademark Office, and the application is held to be abandoned or the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

(1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;

(2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and

(3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Although petitioner satisfied item (2), item (3) is now not satisfied under 37 CFR 1.8(b).

With regard to item (2) above it is satisfied, the present petition includes a copy of the previously transmitted correspondence and certificate of transmission, a copy of the executed declaration filed on August 7, 2006 has been filed.

With regard to item (3) above, section 512 of the MPEP states the following: "If the person signing the statement did not sign the certificate of mailing, then the person signing the statement should explain how they have firsthand knowledge of the previous timely mailing or transmission." The renewed petition, which is signed by John P. Musone, states that "Applicants submit a copy of the executed declaration filed on August 7, 2006 by the person who executed the Certificate of Transmission under 37 CFR 1.8." However, Mr. Musone is not the person who executed the Certificate of Transmission for the August 7, 2006 transmission, and he does not state "how he has firsthand knowledge of the previous mailing or transmission," as required by the MPEP (the renewed petition does not include a confirming statement from Ann Hickey, the person who signed the Certificate of Transmission).

Based on the above, the present submission does not satisfy the requirement of 37 CFR 1.8(b)(3).

Accordingly, on the present record it cannot be concluded that the declaration was included with the present petition were originally filed by facsimile on August 7, 2006 as a timely response to the Notification Of Missing Requirements.

### **CONCLUSION**

For the reasons discussed above, applicants' petition to withdraw the holding of abandonment under 37 CFR 1.181 and 1.8(b) is **DISMISSED** without prejudice.

The application remains **ABANDONED**.

Any request for reconsideration must be filed within **TWO (2) MONTHS** of the mail date of the present decision and must include the materials required to satisfy 37 CFR 1.8(b)(3), as discussed above and in the MPEP. The reconsideration request should include a cover letter entitled "Second Renewed Petition Under 37 CFR 1.181".

Any further correspondence with respect to this matter should be addressed to the Mail Stop PCT, Commissioner for Patents, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.

A handwritten signature in dark ink, appearing to read 'R. Bacares', is written over the printed name.

Rafael Bacares

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